

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KEITH WALKER,
Plaintiff,

v.

ADMINISTRATOR OF THE ESTATE OF
FORMER CHICAGO POLICE
DEPARTMENT COMMANDER JON
BURGE, *et al.*,
Defendants.

Case No. 21 C 4231

Judge Sunil R. Harjani

Magistrate Judge Gabriel A. Fuentes

**DEFENDANTS' UNOPPOSED MOTION TO APPOINT COUNSEL FOR WITNESSES
MARCUS BELL AND BRIAN SMITH**

Defendants, by their undersigned counsel, move this Court, pursuant to its request, to appoint counsel for material witnesses Marcus Bell and Brian Smith. In support thereof, Defendants state as follows:

1. Marcus Bell was one of Plaintiff's criminal co-defendants. His affidavit, indicating he did not know Plaintiff and that he was not present during the underlying crime, was used in part by Plaintiff to obtain a Certificate of Innocence, a key piece of evidence Plaintiff intends to introduce against Defendants at the trial in this case. (See also Dkt. 256-1.) Mr. Bell's deposition was commenced on November 22, 2023, but could not be concluded because of timing issues at the courthouse so the deposition was suspended. (Dkt. 282.) After delays in resuming discovery and extensive efforts to reschedule Mr. Bell's deposition, the parties were scheduled to complete Mr. Bell's previously suspended deposition on November 18, 2025. On that day, Mr. Bell, who is currently on parole in an unrelated case, expressed for the first time that he was asserting his Fifth Amendment rights and refused to testify as to any matter without being able to confer with

attorney. He never once raised this issue in the numerous discussions about rescheduling his deposition.

2. An emergency telephonic hearing with the Court was held during the deposition on Defendants' oral motion to compel Mr. Bell to testify. That motion was denied. (*See* Dkts. 451, 453.) The Court then invited Defendants to move for the appointment of counsel for Mr. Bell and Plaintiff's counsel indicated Plaintiff did not oppose such a motion. *Id.*

3. Similarly, Brian Smith (aka Brian Bell), Mr. Bell's incarcerated brother, asserted his Fifth Amendment right not to testify without the presence of a lawyer at his September 24, 2025 deposition, taken remotely from Pontiac Correctional Center. (Exhibit A, Smith Dep. Trans. at 8-11.) As background, Mr. Bell and Mr. Smith were incarcerated together at Pontiac at around the time Plaintiff was released from prison and both had recorded telephone conversations with and about Plaintiff. At times, Smith and Bell also utilized each other's unique prisoner identification number when making calls.

4. Mr. Smith indicated at his deposition that he did not at that time have an attorney and subsequent attempts by the undersigned to seek the name of Mr. Smith's attorney have gone unanswered. (*Id.* at 11, 13-15.) While Defendants do not believe Mr. Smith is entitled to an attorney as there is no reasonable basis for him to believe he would be subject to criminal prosecution based on answers related to his calls with and about Plaintiff, Defendants nevertheless believe that the best way to expedite the issue is for the court to appoint him counsel along with Mr. Bell.

5. Both witnesses are material to the defense in this case. Both have refused to testify without an attorney present. Neither has obtained an attorney on their own. Defendants therefore

request that the court appoint an attorney to represent these witnesses so that the parties can complete fact discovery as expeditiously as possible.

WHEREFORE, Defendants respectfully request that this Court grant this motion and appoint an attorney to represent Mr. Bell and Mr. Smith at their depositions in this matter and for any further relief as this Court deems just and appropriate.

Dated: November 21, 2025.

Respectfully submitted,

/s/ Stacy A. Benjamin
***Special Assistant Corporation Counsel for
Defendant Officers***

Eileen E. Rosen
Stacy A. Benjamin
Brittany D. Johnson-Delgado
Rock, Fusco & Connelly, LLC
333 W Wacker Drive, Floor 19
Chicago, Illinois 60606
(312) 494-1000
sbenjamin@rfclaw.com